

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement of:

NATALYA SKYE, Petitioner

Agency Case No. 5303

OAH Case No. 2022100346

DECISION

This matter was heard before a quorum of the Board of Pharmacy (Board) by videoconference on October 26, 2022. Wim van Rooyen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, presided.

Nicole R. Trama, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Herbert L. Weinberg, Attorney at Law, Fenton Law Group LLP, represented Natalya Skye (petitioner), who was present.

Evidence was received, the record closed, and the matter submitted for decision on October 26, 2022.

FACTUAL FINDINGS

Former License

1. On June 23, 2004, the Board issued petitioner Registered Pharmacist License No. RPH 55396 (license). The license was surrendered effective October 16, 2015, as discussed below.

Disciplinary History

2. On August 31, 2012, a former Board Executive Officer, in her official capacity, signed and thereafter filed an Accusation in Case No. 3824 (2012 Accusation) against petitioner and Michael's Pharmacy, Inc. (Michael's Pharmacy). Petitioner was Michael's Pharmacy's owner and pharmacist-in-charge (PIC) at all relevant times. The 2012 Accusation alleged cause for discipline based on the following violations discovered in the course of two separate Board inspections and investigations: (1) failure to comply with records requirements; (2) failure to maintain complete acquisition/disposition records; (3) allowing a non-pharmacist to order and receive controlled substances; (4) providing an unapproved employee with a pharmacy key; (5) failure to have a self-assessment form during an inspection; (6) incorrectly labeled prescription bottles; (7) telephone orders not reduced to writing; (8) failure to maintain operational standards; and (9) unauthorized furnishing.

3. On November 15, 2013, petitioner entered into two Stipulated Settlements and Disciplinary Orders submitted for the Board's consideration (2013 Stipulated Settlements) concerning petitioner's license and Michael's Pharmacy's pharmacy permit, respectively. By virtue of the 2013 Stipulated Settlements, petitioner admitted the truth of all allegations and charges in the 2012 Accusation, and agreed

that her license and Michael's Pharmacy's pharmacy permit be placed on probation for five years. Probation conditions included obeying all laws; maintaining a current, valid license while on probation; and a 30-day suspension beginning on the effective date of the decision adopting the 2013 Stipulated Settlements. On February 7, 2014, the Board adopted the 2013 Stipulated Settlements as its own decision, which became effective February 14, 2014.

4. On November 21, 2014, a former Board Executive officer, in her official capacity, filed an Accusation and Petition to Revoke Probation in Case No. 5303 (2014 Accusation and Petition) against petitioner and Michael's Pharmacy. On April 28, 2015, petitioner agreed to surrender Michael's Pharmacy's pharmacy permit. The Board accepted that permit surrender effective July 13, 2015.

5. On July 22, 2015, a former Board Executive Officer signed and thereafter filed a First Amended Accusation and Petition to Revoke Probation in Case No. 5303 against petitioner only (2015 FAA and Petition), which superseded the 2014 Accusation and Petition. The 2015 FAA and Petition resulted from: (a) Board investigatory visits, inspections, and audits conducted in 2014 because of petitioner's and Michael's Pharmacy's probationary status, and (b) the Board's investigation of two anonymous complaints, which included allegations of fraudulent billing, falsifying telephone prescriptions, and pharmacy technicians at Michael's Pharmacy selling large amounts of narcotics for cash to street dealers.

The 2015 FAA and Petition alleged 12 specific causes for discipline against petitioner:

(1) Failure to maintain operational standards and security: Petitioner's failure to maintain pharmacy security or provide effective controls against theft or diversion

resulted in massive inventory losses without documented disposition, including thousands of tablets of hydrocodone and oxycodone.

(2) Failure to assume corresponding responsibility to assure legitimacy of prescriptions: Petitioner dispensed controlled substance prescriptions under prescriptions that were invalid, falsified, and/or contained significant errors, omissions, irregularities, uncertainties, and/or ambiguities, because she failed to maintain a proper protocol for prescription verification. For example, petitioner failed to verify the legitimacy of and discover 208 falsified controlled substance prescriptions purportedly written by three physicians. Additionally, she failed to verify the legitimacy of 50 dispenses of the drug buprenorphine to a single patient.

(3) Failure of pharmacist to exercise corresponding responsibility: This cause for discipline was based on the conduct discussed above.

(4) Failure to maintain records of acquisition and disposition: This cause for discipline was based on the conduct discussed above.

(5) Operation of pharmacy with unlicensed pharmacist: Petitioner failed to timely renew her license, which expired on March 31, 2014. Nonetheless, she continued as the PIC at Michael's Pharmacy, working on an expired license for most of April 2014 until her license was renewed on May 1, 2014.

(6) Violations related to compounded drug products: Compounded drug products prepared at Michael's Pharmacy were found to be non-compliant with various labeling and recordkeeping requirements.

(7) Self-furnishing of controlled substances: Between 2012 and 2014, petitioner filled her own prescriptions for controlled substances on at least five occasions.

(8) Conviction of substantially related crimes: Petitioner sustained two criminal convictions.

First, on December 17, 2014, in the Los Angeles County Superior Court, petitioner pled nolo contendere to one interlineated count of violating Vehicle Code section 23109, subdivision (c) (exhibition of speed), a misdemeanor. That conviction arose from an April 28, 2014 incident in which petitioner's vehicle collided with another vehicle on a freeway exit ramp. Thereafter, she was found passed out at the steering wheel of her car.

Second, on February 2, 2015, in the Los Angeles County Superior Court, petitioner pled nolo contendere to violating Health and Safety Code section 11150, subdivision (a) (unlawfully being under the influence of a controlled substance), a misdemeanor. That conviction arose from an August 1, 2014 incident where petitioner's 66-year-old mother was treated by paramedics for a drug overdose and transported to hospital for emergency treatment following a 911 call from Michael's Pharmacy. Petitioner accompanied her mother to the hospital. At the hospital, petitioner was arrested after a hospital social worker contacted police to report that petitioner appeared "altered" and was falling in and out of sleep while attending to her mother. Petitioner provided a blood sample, which tested positive for opiates and benzodiazepines.

(9) Conviction of a crime involving consumption of dangerous drugs: This cause for discipline was based on petitioner's February 2015 conviction.

(10) Use of controlled substances to the extent that use impairs safety: This cause for discipline was based on petitioner's February 2015 conviction. Additionally, on August 1, 2014, prior to her mother's emergency treatment, petitioner was working

as a pharmacist at Michael's Pharmacy. Pharmacy employees reported that petitioner was "acting crazy" and "behaving differently" that day; she "appeared unsteady and had slurred speech." Moreover, on August 13, 2014, petitioner was accepted into Maximus, the Board's diversion program for substance abuse treatment. Around September 4, 2014, Maximus terminated petitioner's participation in the program. Maximus's program manager deemed petitioner "NOT safe to practice" and a public risk.

(11) Practice as a pharmacist while under the influence: This cause for discipline was based on petitioner's conduct discussed above.

(12) Violation of federal pharmacy regulations: In August 2014, petitioner gave her confidential Controlled Substance Ordering System (CSOS) passcode to an unlicensed employee to allow the employee to make two controlled substance purchases.

Additionally, the 2015 FAA and Petition alleged three causes to revoke petitioner's probation:

(1) Failure to obey all laws: This cause was based on petitioner's criminal convictions and numerous violations of pharmacy law discussed above.

(2) Practicing pharmacy without a current, valid license: This cause was based on petitioner's practice of pharmacy with an expired license for most of April 2014.

(3) Violation of the suspension order: Petitioner admitted to her probation monitor that she had worked as a pharmacist at Michael's Pharmacy from February 14 through 19, 2014, despite the ordered 30-day suspension having commenced on February 14, 2014.

6. On July 27, 2015, petitioner entered into a Stipulated Surrender of License and Order (2015 Stipulated Surrender) submitted for the Board's consideration. By virtue of the 2015 Stipulated Surrender, petitioner admitted the truth of all allegations and charges in the 2015 FAA and Petition and agreed to surrender her license. She further agreed to pay the Board its outstanding investigation and enforcement costs of \$55,586 prior to any reinstatement of her license. On September 16, 2015, the Board adopted the 2015 Stipulated Surrender as its own decision, which became effective on October 16, 2015.

Petition for Reinstatement

7. On October 29, 2021, petitioner signed and thereafter filed the instant Petition for Reinstatement (Petition). Petitioner testified at the Board hearing and provided documentary evidence, including letters of support.

8. Petitioner was born in Ukraine and only moved to the United States at the age of 19. In June 2003, she obtained her Doctor of Pharmacy degree from the University of Southern California. She became licensed as a California pharmacist in June 2004.

9. In the early part of her pharmacy career, petitioner worked at various chain and independent retail pharmacies. In April 2006, she acquired Michael's Pharmacy, a small independent pharmacy in Pasadena, California. She operated Michael's Pharmacy for nearly a decade with a "loyal customer base" and "wonderful business partners" until she surrendered its pharmacy permit and her own license.

10. Petitioner testified that she accepts responsibility for all allegations in the 2015 FAA and Petition. She has made mistakes as a business owner and operator.

However, she has also been "severely disciplined both for failures in and out of my control" and believes her "dues have sufficiently been paid." Both her criminal convictions have been expunged and/or dismissed for compliance with sentencing terms. She is no longer on criminal probation and has not had any subsequent negative interactions with law enforcement.

11. In her Petition, petitioner denied ever having been addicted to narcotics or habitually intemperate in her use of drugs. At hearing, petitioner explained that she had a series of motor vehicle accidents in 2014, including the April 2014 accident that led to her December 2014 conviction. At the time, she was stressed, not sleeping well, and very fatigued. She underwent an extensive medical workup that rendered no clear diagnosis. However, she denies that the April 2014 accident was related to any narcotic use.

As for the August 2014 incident that led to her February 2015 conviction, petitioner denied intentionally using narcotics. That day, her mother visited Michael's Pharmacy, and they both drank from the same water bottle. She believes some of the pharmacy technicians at Michael's Pharmacy may have drugged her and her mother by putting opiates in the water. At hearing, petitioner was asked about a letter from a former treating psychiatrist, submitted with the Petition, which indicated that petitioner told the psychiatrist she "must have mistaken the [opiate medication] tablet that were [sic] prescribed for her mother." She was also asked why she admitted to Maximus staff during an August 2014 intake interview that she took pain medication prescribed for her mother. Petitioner responded that "it's been a long time" and "I don't recollect events clearly."

Maximus terminated petitioner's participation in the program in September 2014 because she failed to enter the recommended residential substance abuse treatment program. She explained that she was unable to enter that program for three reasons. First, she did not want to leave her then-15-year-old son in the care of others while she attended the residential program. Second, the costs of the program were extremely high. Third, she did not abuse opiates and thus the program would have been unnecessary.

Along with the Petition, petitioner offered lab reports from opiates testing performed in November 2014 through January 2015, with negative test results. Some of the tests were incomplete opiate screens, testing only for codeine and morphine but not for hydromorphone or hydrocodone. Petitioner explained that there was no known reason for the incomplete opiate screens; she just took the tests her "doctor friend" had ordered.

12. Petitioner is not currently in any treatment program for drug addiction. She testified that she has not used any opiates or controlled substances not lawfully prescribed to her since 2014. She would be willing to attend a substance abuse treatment program if required by the Board, provided that it is not cost prohibitive.

13. On July 16, 2022, petitioner underwent a psychiatric evaluation by psychiatrist Brian P. Jacks, M.D. Following the evaluation, Dr. Jacks authored a report dated August 25, 2022. Petitioner's mental status examination and psychological testing results were within normal limits and indicated no psychiatric or addiction problems. However, some scores suggested that she was defensive and guarded.

14. Since petitioner surrendered her license, she has primarily worked in home health care as a non-licensed quality assurance analyst. Such positions only earn

close to minimum wages, and she strongly desires to increase her income by returning to pharmacy practice. Petitioner also previously held a California Registered Nurse (RN) license, but that license was revoked effective July 27, 2016, based on her pharmacy license discipline and criminal convictions. Effective November 25, 2020, the California Board of Registered Nursing also denied her petition to reinstate her RN license. Petitioner's financial need has become even greater due to the recent passing of her husband.

15. Petitioner has kept up to date on the pharmacy profession. She has continued to take pharmacy continuing education (CE) courses over the years. More recently, in August 2021 she completed 30 hours of CE, and in June 2022, she completed 24 hours of CE. She also regularly reads the Pharmacy Times and US Pharmacist.

16. If petitioner's license were reinstated, she would likely continue to work in retail pharmacy. However, she is also interested in exploring veterinary compounding.

17. To date, petitioner has not paid any cost recovery. She is willing to enter into a payment plan with the Board if her license is reinstated.

18. For purposes of Business and Professions Code section 4309, subdivision (b),¹ petitioner submitted 14 letters of recommendation. Nine of those letters were

¹ Business and Professions Code section 4309, subdivision (b), provides:

The petition shall state any facts required by the board, and
the petition shall be accompanied by two or more verified

dated more than one year prior to the Petition's filing. Board staff verified the remaining five letters: two from California-licensed pharmacists and three from non-pharmacists.

The pharmacist authors both worked with petitioner in the early stages of petitioner's pharmacy career. They described petitioner as professional, enthusiastic, and caring, with the highest integrity and a commitment to rules and procedures. Both professed general awareness of petitioner's license discipline, but did not articulate particular knowledge regarding the underlying violations and circumstances. When interviewed by Board staff, one of the pharmacist authors noted that petitioner "has changed and [is] not using drugs," and he "highly doubts [petitioner] will return to her old ways."

The non-pharmacist authors (her current and former employers in the home health care industry) also lauded petitioner's professionalism, dedication, and passion to help others. All professed awareness of petitioner's prior license discipline.

recommendations from holders of licenses issued by the board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the board and the activities of the petitioner since the disciplinary penalty was imposed.

LEGAL CONCLUSIONS

1. A pharmacist whose license was surrendered may petition the Board for license reinstatement after at least three years have passed since the effective date of the surrender. (Bus. & Prof. Code, § 4309, subd. (a)(1).) Here, more than three years have passed since petitioner's license was surrendered effective October 16, 2015. Thus, the Petition is timely.

2. Petitioner bears the burden of proving by clear and convincing evidence that license reinstatement is appropriate. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091–1092.) "Clear and convincing evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.)

3. When evaluating the Petition, the Board may consider: (1) all the activities of the petitioner since the disciplinary action was taken; (2) the offense for which the petitioner was disciplined; (3) the petitioner's activities during the time the license was in good standing; (4) the petitioner's documented rehabilitative efforts; and (5) the petitioner's general reputation for truth and professional ability. (Bus. & Prof. Code, § 4309, subd. (d).)

4. Petitioner's prior misconduct was extremely serious. She also previously failed to comply with the Board's probation program. Although she now professes to accept responsibility for her prior misconduct, she continues to make excuses and shift blame to others. Significantly, she also continues to deny ever having had any problem

with substance abuse. That denial is belied by her inconsistent statements and implausible account that she was drugged by pharmacy employees. Her incomplete drug screens and guardedness during the psychiatric evaluation only raise further questions regarding petitioner's sustained rehabilitation and insight. Additionally, the recommendation letters are of limited value because it is unclear whether the authors knew about the specific violations and circumstances that led to petitioner's prior discipline.

5. The Board is sympathetic to the difficult life circumstances petitioner may have faced. However, the Board's mandate is public protection. On the present record, petitioner has not demonstrated by clear and convincing evidence that she is sufficiently rehabilitated to reinstate her license, even on a probationary basis. Thus, the Petition must be denied.

ORDER

The Petition for Reinstatement filed by Natalya Skye is DENIED.

DATE:

Seung Oh, Pharm.D.

President

Board of Pharmacy, State of California